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POSTAL SERVICE

39 CFR Part 955

Rules of Practice Before the Postal Service Board of Contract Appeals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document revises the rules of practice of the Postal Service Board of Contract Appeals to implement an electronic filing system.

DATES: *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written inquiries may be addressed to Postal Service Board of Contract Appeals, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

FOR FURTHER INFORMATION CONTACT: Vice Chairman Gary E. Shapiro, (703) 812-1910.

SUPPLEMENTARY INFORMATION:

A. Background.

The Postal Service Board of Contract Appeals (the Board) recently has implemented an electronic filing system. Changes to the rules of practice before the Board in 39 CFR part 955 are necessary to accommodate the new system, and to establish rules relative to that system. No other changes to the rules have been made.

B. Explanation of changes.

In § 955.1, concerning jurisdiction, procedure, and service of documents in proceedings before the Board:

- Paragraph (b)(1) is amended to identify the internet address for the electronic filing system.
- Paragraph (c)(3)(ii) is amended to indicate when Board orders and decisions are considered received by the parties in the electronic filing system.
- Paragraph (c)(4) is revised to indicate when documents submitted by parties are considered received by the Board in the electronic filing system, and to clarify other language involving receipt of documents.
- Paragraph (c)(5) is revised to indicate when service of documents on the opposing party is required for purposes of the electronic filing system.

In § 955.2, the heading is revised to *Initiation of appeals*, and the text is revised to indicate how appeals may be initiated directly by a contractor following implementation of the electronic filing system.

In § 955.4, with regard to the forwarding of appeals, the text is revised to indicate how appeals are initiated when a contractor submits a notice of appeal to a contracting officer following implementation of the electronic filing system.

In § 955.5, concerning the preparation, contents, organization, forwarding, and status of the appeal file:

- Paragraph (a) is revised to eliminate the requirement for the Postal Service's counsel to provide a copy of the appeal file to the appellant,

which becomes unnecessary under the electronic filing system, and to clarify the language of paragraph (a)(4) with regard to transcripts and affidavits included in the appeal file.

- Paragraph (b) is revised to eliminate the requirement for the appellant to provide a copy of an appeal file supplement to the Postal Service, which becomes unnecessary under the electronic filing system.
- Paragraph (c) is revised to reflect that appeal file documents submitted in the electronic filing system are not original documents.
- Paragraph (d) is revised to reflect appropriate rules for handling bulky, lengthy or out-of-size documents, and tangible evidence following implementation of the electronic filing system.

In § 955.7, with regard to the procedures required to file pleadings in cases before the Board:

- Paragraph (a) is revised to eliminate the requirement for the appellant to provide a copy of the complaint to the Postal Service, which becomes unnecessary under the electronic filing system.
- Paragraph (b) is revised to eliminate the requirement for the Postal Service to provide a copy of the answer to the appellant, which becomes unnecessary under the electronic filing system.

In § 955.10, with regard to prehearing briefs, a sentence is added to specify the deadline for filing prehearing briefs under the electronic filing system.

In § 955.13, concerning optional small claims and accelerated procedures, language in paragraph (a)(3) is amended to enhance clarity.

In § 955.14, with regard to settling the record, language requiring the availability of the record for inspection at the Board's location is removed from paragraph (a), since the record will be available in the electronic filing system.

In § 955.15, concerning discovery, language is added to paragraph (a) to clarify when discovery requests and responses should be filed under the electronic filing system.

In § 955.26, with regard to the appearance and representation by counsel of parties before the Board:

- Paragraphs (a) and (b) are revised to specify that attorneys for appellants and the respondent U.S. Postal Service shall register in the electronic filing system and provide an email address.
- Paragraph (c) is revised to indicate that changes in email addresses or in representation of a party must be entered in the electronic filing system.

In § 955.27, concerning the withdrawal of an attorney, the revised language specifies that a motion or notice to withdraw from representation must include an email address for the person assuming responsibility for representation.

In § 955.29, with regard to decisions of the Board, the first sentence is revised to indicate that the Board will issue decisions through the electronic filing system.

In § 955.36, concerning effective dates and applicability, the revised language specifies that these amended rules will govern proceedings under part

955 docketed on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

List of Subjects in 39 CFR Part 955

Administrative practice and procedure, Government contracts.

Accordingly, for the reasons stated, 39 CFR part 955 is amended as follows:

PART 955—RULES OF PRACTICE BEFORE THE POSTAL SERVICE BOARD OF CONTRACT APPEALS

1. The authority citation for 39 CFR part 955 continues to read as follows:

Authority: 39 U.S.C. 204, 401; 41 U.S.C. 7101-7109.

2. In § 955.1, revise the second and third sentences of paragraph (b)(1), add a new sentence at the start of paragraph (c)(3)(ii), and revise paragraphs (c)(4) and (c)(5) to read as follows:

§ 955.1 Jurisdiction, procedure, service of documents.

* * * * *

(b) * * *

(1) * * * The Board's telephone number is (703) 812-1900, and its web site is *<http://www.about.usps.com/who-we-are/judicial/welcome.htm>*. The web site for electronic filing is *<https://uspsjoe.newdawn.com/justiceweb>*.

* * * * *

(c) * * *

(3) * * *

(ii) Unless otherwise specified by the Board, orders and decisions shall be considered received by the parties on the date posted to the electronic filing system. * * *

* * *

(4) *Manner of filings.* Pleadings and other communications shall be filed using the electronic filing system unless the Board permits otherwise. Documents submitted using that system are considered filed with the Board as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Board are considered filed with the Board on the date mailed as evidenced by a United States postmark. Filings submitted by any other means are considered filed with the Board upon receipt by the Recorder of a complete copy of the filing during the Board's working hours (8:45 a.m. – 4:45 p.m. Eastern Time).

(5) *Service.* If both parties to an appeal are participating via the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail with the opposing party by an equally or more expeditious means of transmittal, noting on the document filed with the Board, or on the transmitting letter, that a copy has been furnished. The filing of a document by fax transmission occurs upon receipt by the Board of the entire legible submission by fax. Copies of simultaneous briefs shall not be filed electronically or otherwise exchanged by the parties but rather shall be filed only with the Board by mail, fax, commercial carrier, or in-person. The Board will distribute simultaneous briefs electronically, or otherwise as

appropriate. The Board may determine not to extend a deadline for filing if the extension is necessary solely because the Board's fax machine is busy or otherwise unavailable when a filing is due. Submissions filed by fax shall be followed promptly by filing by mail.

3. Revise § 955.2 to read as follows:

§ 955.2 Initiation of appeals.

An appeal must be initiated by the filing of a notice of appeal (or equivalent). See § 955.1(c)(4). The notice of appeal must be in writing and must be filed within the time specified by applicable law.

4. Revise § 955.4 to read as follows:

§ 955.4 Forwarding of appeals.

If a party seeking to file an appeal submits a notice of appeal to the contracting officer instead of filing it using the electronic filing system, the contracting officer shall indicate thereon the date of receipt and shall forward the notice of appeal, including any envelope or other wrapping indicating the date of mailing, within 10 days to the Postal Service General Counsel's Office. A designee of the General Counsel promptly shall enter the resulting case into the electronic filing system.

5. In § 955.5, revise the first sentence of the introductory text of paragraph (a), and revise paragraph (a)(4), and paragraphs (b), (c), and (d) to read as follows:

§ 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) * * * Within 30 days from receipt of the Board's docketing notice, or such other period as the Board may order, the respondent's counsel shall file with the Board an appeal file consisting of all documents pertinent to the appeal. * * *

* * * * *

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal; and

* * * * *

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file, the appellant shall supplement the appeal file by transmitting to the Board any documents not contained therein considered to be pertinent to the appeal.

(c) *Organization of appeal file.* Documents in the appeal file or supplement, as applicable shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed, to identify the contents. Page numbering shall be consecutive and continuous from one document to the next, so that the complete file or supplement, as applicable, will consist of one set of consecutively numbered pages.

(d) *Lengthy documents.* The Board may waive the requirement to exchange or electronically file bulky, lengthy, or out-of-size documents, or

tangible evidence in the appeal file on a showing of impracticality or undue burden. Documents or tangible evidence subject to a waiver will be available for inspection at the Board.

* * * * *

6. In § 955.7, revise the first sentence of paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 955.7 Pleadings.

(a) * * * Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. *

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* * * * *

(b) * * * Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the respondent shall prepare and file with the Board an answer thereto, setting forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant. * * *

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7. In § 955.10, revise the final sentence to read as follows:

§ 955.10 Prehearing briefs.

* * * In any case where a prehearing brief is submitted, it shall be filed with the Board at least 15 days prior to the date set for hearing.

8. In § 955.13, revise the first sentence of paragraph (a)(3) to read as follows:

§ 955.13 Optional Small Claims (Expedited) and Accelerated Procedures.

(a) * * *

(3) In cases proceeding under the Expedited Procedure, the respondent shall file with the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any, within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the Expedited Procedure. * * *

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§ 955.14 [Amended]

9. In § 955.14, remove the sentence at the end of paragraph (a).

10. In § 955.15, add a sentence to the end of paragraph (a), to read as follows:

§ 955.15 Discovery.

(a) * * * Except in connection with motions to compel or for a protective order, discovery requests and responses should not be filed with the Board.

* * * * *

11. Revise § 955.26 to read as follows:

§ 955.26 Representation of the parties.

(a) The term *appellant* means a party that has filed an appeal for resolution by the Board. An individual appellant may appear before the Board in his or her own behalf, a corporation may appear before the Board by an officer thereof, a partnership or joint venture may appear before the Board by a member thereof. Any appellant may appear before the Board by an attorney at law duly licensed in any state, commonwealth, territory of the United States, or in the District of Columbia. An attorney representing an appellant shall register in the electronic filing system, and file a notice of appearance. The notice of appearance must include an email address, mailing address, telephone number, fax number, and a jurisdiction in which the attorney is licensed to practice law.

(b) The term *respondent* means the U.S. Postal Service. Postal Service counsel, who shall be an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia, designated by the General Counsel, will represent the interest of the Postal Service before the Board. Postal Service counsel shall register in the electronic filing system, and file a written notice of appearance with the Board. The notice of appearance must include an email address, mailing address, telephone number, fax number, and a jurisdiction in which the attorney is licensed to practice law.

(c) References to *contractor, appellant, contracting officer, respondent and parties* shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board. A self-represented party or an attorney representing either party shall inform the Board promptly of any change in his or her email address, mailing address, telephone number, or fax number, and must enter the appropriate changes promptly in the electronic filing system.

12. Revise § 955.27 to read as follows:

§ 955.27 Withdrawal of attorney.

Any attorney for either party who has filed a notice of appearance and who wishes to withdraw from a case must file a motion or notice which includes the name, email address, mailing address, telephone number, and fax number of the person who will assume responsibility for representation of the party in question.

13. In § 955.29, revise the first sentence to read as follows:

§ 955.29 Decisions.

Decisions of the Board will be made in writing and sent to both parties through the electronic filing system, or otherwise as appropriate. * * *

14. Revise § 955.36 to read as follows:

§ 955.36 Effective dates and applicability.

These revised rules govern proceedings under this part docketed on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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